

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

United States of America,) CRIMINAL NO. 4:97-866

CRIMINAL NO. 4:97-866

V.

OPINION and ORDER

Ronald Lee Wilson,

Defendant.

Ronald Lee Wilson,
Defendant.

Defendant filed a placeholder motion for relief under 28 U.S.C. § 2255 on June 24, 2016, while he awaited a decision on his pending § 2244 motion in the Fourth Circuit for permission to file a second or successive § 2255 motion. ECF No. 257. Defendant’s motion was styled as a “motion for leave to file and to stay consideration” pending the Fourth Circuit’s ruling on his § 2244 motion. *Id.*

Defendant filed a prior motion for relief pursuant to 28 U.S.C. § 2255 in 2000, which the District Court denied as untimely. *See* 4:00-cv-3001-CMC (ECF No. 9). The Fourth Circuit dismissed the appeal. *United States v. Ronald Lee Wilson*, 14 F. App'x 175 (4th Cir. 2001) (unpublished).

Defendant's proposed § 2255 motion (ECF No. 257-1) based on potential invalidation of the residual clause of 18 U.S.C. § 924(c) under *Johnson v. United States*, 576 U.S. __, 135 S. Ct. 2551 (2016) is a successive § 2255 motion. Prior to filing a second or successive motion under § 2255, Defendant must obtain certification by a panel of the Fourth Circuit Court of Appeals allowing him to file a second or successive motion. As provided in 28 U.S.C. § 2244, “[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider

the application.” 28 U.S.C. § 2244(b)(3)(A). *See also* Rule 9 of the Rules Governing 2255 Proceedings (“Before presenting a second or successive motion, the moving party must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion . . .”).

On June 19, 2017, after holding the matter in abeyance since July 12, 2016, the Fourth Circuit denied Defendant’s § 2244 motion for authorization to file a second or successive § 2255. No. 16-9259, ECF No. 11 (4th Cir. June 19, 2017).

The requirement of petitioning a court of appeals (in this instance, the Fourth Circuit) for permission to file a second or successive § 2255 motion is jurisdictional. Therefore, Defendant’s failure to receive permission from the Fourth Circuit to file his § 2255 motion is fatal to any action in this court. Defendant’s motion for leave to file a successive § 2255 motion is denied, and the motion to stay consideration is moot.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
June 20, 2017